



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,326	07/10/2003	Bastiaan Driehuys	PM0026 DIV	2824

7590
Amersham Health, Inc.
101 Carnegie Center
Princeton, NJ 08540

06/19/2007

EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
----------	--------------

1618

MAIL DATE	DELIVERY MODE
-----------	---------------

06/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/617,326	Applicant(s) DRIEHUYS ET AL.	
	Examiner D. L. Jones	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/3/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 64-69 and 80 is/are pending in the application.
 4a) Of the above claim(s) 80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 64-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO APPLICANT'S ARGUMENTS

1. The Applicant's arguments filed 5/3/07 to the rejection of the claims made by the Examiner under 35 USC 103 and/or double patenting have been fully considered and deemed persuasive-in-part.

Note: Claims 64-69 and 80 are pending.

103 Rejection

The 103(a) rejection is WITHDRAWN for reasons of record in Applicant's response.

Double Patenting Rejections

I. The provisional rejection of claims 64-69 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 26 and 30 of copending application number 10/356,240 is MAINTAINED for reasons of record in the office action mailed 11/3/06 and those set forth below.

In summary, Applicant asserts that the provisional double patenting rejection should be withdrawn because the instant application was filed before the copending application.

Applicant's response has been considered. However, the rejection will remain of record until it such time that the provisional double patenting rejection is the only rejection of record.

II. The provisional rejection of claims 64-69 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 49 and 53 of

Art Unit: 1618

copending application number 10/761,794 is MAINTAINED for reasons of record in the office action mailed 11/3/06 and those set forth below.

In summary, Applicant asserts that the provisional double patenting rejection should be withdrawn because the instant application was filed before the copending application.

Applicant's response has been considered. However, the rejection will remain of record until it such time that the provisional double patenting rejection is the only rejection of record.

III. The rejection of claims 64-69 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 12, 13, 15, 17, 19, 20, and 31 of US Patent No. 6,630,126 is MAINTAINED for reasons of record in the office action mailed 11/3/06 and those set forth below

It is duly noted that Applicant is amenable to filing a terminal disclaimer once claims are allowable over the prior art.

IV. The rejection of claims 64-69 on the ground of nonstatutory type-type double patenting as being unpatentable over claims 1-8 and 24-34 of US Patent No. 6,808,699 is MAINTAINED for reasons of record in the office action mailed 11/3/06 and those set forth below

It is duly noted that Applicant is amenable to filing a terminal disclaimer once claims are allowable over the prior art.

Art Unit: 1618

WITHDRAWN CLAIM

2. Claim 80 is withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

COMMENTS/NOTES

3. *Applicant is once again respectfully requested to amend the claims to read on the elected invention.* Applicant's elected invention, Group VII, is drawn to a method of evaluating the efficacy of a targeted drug therapy wherein the treatment is cardiac/pulmonary and a pharmaceutical preparation is administered. The claims are distinguished over the prior art of record because the prior art neither anticipates nor renders obvious a method of evaluating efficacy of a targeted drug therapy as set forth in Group VII.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1618

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


D. L. Jones
Primary Examiner
Art Unit 1618

June 14, 2007